



State of Tennessee

Justin P. Wilson, State Comptroller

For Immediate Release: Jan. 26, 2012

Investigation Finds Issues Regarding Operations of the Metro Nashville County Clerk's Office

The Metropolitan Nashville Davidson County Office of the County Clerk repeatedly collected improper fees from citizens, made an improper payment from funds maintained by the office, and engaged in poor payroll recordkeeping, an investigation by the state Comptroller's office has revealed.

The investigation was conducted by the Comptroller's Division of County Audit with assistance from the Tennessee Bureau of Investigation.

Auditors found that between Sept. 1, 2006 and June 26 of last year, the office performed nearly 3,000 marriage ceremonies for which a \$40 fee was usually charged to the marrying couples. Numerous interviews with office employees and couples indicate the fees charged were not optional, which appears to conflict with state law.

The fees were placed in envelopes and personally delivered to Davidson County Clerk John Arriola. Auditors estimate that almost \$120,000 was collected during the time period under review.

The investigation found numerous personnel and payroll issues, including:

- Arriola hired his campaign treasurer, Leighton Bush, as his office outreach coordinator, but could not document the hours Bush actually worked for the office or outreach projects he completed
- Arriola contracted with David Currey in a non-competitive process and paid his firm more than \$40,000 for consulting work at the same time Currey was renting property from Arriola
- Payroll records revealed 63 employees in the office were compensated for overtime hours they did not actually work

STATE OF TENNESSEE

**SPECIAL REPORT ON THE
METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY
OFFICE OF COUNTY CLERK**

**FOR THE PERIOD SEPTEMBER 1, 2006
THROUGH JULY 30, 2011**



Division of County Audit



**SPECIAL REPORT ON THE
METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY
OFFICE OF COUNTY CLERK
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January 25, 2012

To the Metropolitan Nashville Mayor,
Metropolitan Nashville County Clerk,
and Metropolitan Council
Davidson County, Tennessee

At the request of the Davidson County District Attorney General, and with the assistance of the Tennessee Bureau of Investigation, the state Comptroller's Division of County Audit conducted an investigation of the Metropolitan Nashville Davidson County Office of County Clerk for the period September 1, 2006, through July 30, 2011. As a result of this investigation, we are presenting our findings and recommendations in this special report.

We reviewed the findings and recommendations resulting from this special investigation with the county clerk and the district attorney general. These findings, recommendations, management's responses, and our rebuttals to management's responses, where appropriate, are presented in this report.

Sincerely,

Jim Arnette, Director
Division of County Audit

cc: Honorable Victor S. Johnson, District Attorney General

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Special Report
Metropolitan Nashville Davidson County, Tennessee
Office of County Clerk
For the Period September 1, 2006 through July 30, 2011

Origin

At the request of the Davidson County District Attorney General, and with the assistance of the Tennessee Bureau of Investigation (TBI), the state Comptroller's Division of County Audit conducted an investigation of the Metropolitan Nashville Davidson County Office of County Clerk for the period September 1, 2006, through July 30, 2011.

General Duties of the County Clerk

The general duties of the county clerk are set out in various sections of *Tennessee Code Annotated* and the metropolitan government charter. The county clerk performs a wide variety of functions, which generally include, but are not limited to (1) keeping the official records of the county legislative body; (2) collecting certain local and state taxes; (3) issuing motor vehicle titles and registration; (4) issuing marriage licenses and performing marriage ceremonies; and (5) issuing business licenses.

Scope

Our investigation included an examination of the county clerk's procedures followed, as well as, funds collected in his performance of marriage ceremonies for the public, policies and procedures of the office, internal controls, marriage records, payroll records, and accounting records. With the assistance of the TBI, we interviewed more than 40 individuals who work or formerly worked in the Office of County Clerk, vendors used by the county clerk, and individuals whose marriage ceremonies were performed by the county clerk.

In addition to our investigation, the Metropolitan Office of Internal Audit performed a review of procurement and other related matters in the Office of County Clerk. Internal Audit will issue the results of their review in a separate report.

Results

Our investigation resulted in 11 findings and recommendations. These findings and recommendations have been communicated to management to provide an opportunity for their response. The county clerk provided written responses to the findings and

recommendations, which are paraphrased in this report. These findings and recommendations have also been reviewed with the district attorney general.

The following are summaries of the findings from our investigation:

- The county clerk required employees in the marriage department to collect fees for the performance of marriage ceremonies.
- The office improperly shifted a disbursement from the General Fund budgetary accounts to the clerk's fee and commission account.
- The office did not report and disburse computer fees to the county trustee on a regular basis.
- The office had deficiencies in the administration of payroll.
- The county clerk did not require documentation or verification of time worked for a part-time outreach coordinator.
- A part-time employee received benefits available to full-time staff.
- The county clerk violated metropolitan government procurement policies.
- The economic benefit derived from the use of a metropolitan government provided vehicle was not calculated and reported on federal Form W-2.
- The clerk's management staff promoted various campaign activities in the clerk's office during business hours.
- Receipts were not always issued at the time of collection, copies were not maintained, and official receipts were not always used.
- The county clerk's office has weaknesses in internal controls over collections.

Metropolitan Nashville Davidson County, Tennessee
Office of County Clerk
Findings and Recommendations
For the Period September 1, 2006 through July 30, 2011

At the request of the Davidson County District Attorney General, and with the assistance of the Tennessee Bureau of Investigation (TBI), the state Comptroller's Division of County Audit conducted an investigation of the Metropolitan Nashville Davidson County Office of County Clerk for the period September 1, 2006, through July 30, 2011. Our findings and recommendations are presented below. These findings and recommendations have been communicated to management to provide an opportunity for their response. The county clerk provided written responses to the findings and recommendations, which are paraphrased in this report. These findings and recommendations have been reviewed with the district attorney general.

**FINDING 11.01 THE COUNTY CLERK REQUIRED EMPLOYEES IN THE
MARRIAGE DEPARTMENT TO COLLECT FEES FOR THE
PERFORMANCE OF MARRIAGE CEREMONIES**

Before being joined in marriage, the parties must obtain a license issued by a county clerk in the State of Tennessee requiring the payment of a license fee and local and state taxes. Our review of the county clerk's marriage license department disclosed the county clerk required employees of the marriage department to collect an additional \$40 cash fee, with rare exceptions, for all marriage ceremonies to be performed by the county clerk. Marriage department employees did not advise couples that the \$40 fee was optional, which inferred it was required. Marriage department employees were required to place the \$40 cash in an envelope for the county clerk along with any other information the couple specifically requested for their vows. The envelopes were delivered personally to the county clerk.

Section 36-3-301(c), *Tennessee Code Annotated (TCA)*, provides a county clerk may receive a gratuity for the solemnization of a marriage, whether performed during or after the clerk's regular working hours, and shall be retained by the clerk as personal remuneration for such services, in addition to any other sources of compensation the clerk might receive. The state attorney general opined in Opinion No. 11-18, it is lawful for authorized officials who perform marriage ceremonies to accept, request, or solicit gratuities for performing wedding ceremonies, but it is not lawful for such officials to charge a fee or demand compensation for performing wedding ceremonies. The opinion defined gratuity as something given voluntarily or beyond obligation, usually in return for or in anticipation of some service.

The county clerk advised the auditors he was familiar with both Section 36-3-301(c), *TCA*, and attorney general Opinion No. 11-18, and he was familiar with the method used by department employees to collect the \$40 fee for him when he was to perform the ceremony. On June 27, 2011, the clerk informed the marriage department employees to stop using the term fee and start using the term gratuity when referencing the \$40. Furthermore, the county clerk informed employees he would personally start collecting the gratuity. The county clerk performed approximately 2,985 marriage ceremonies for the period September 1, 2006, through June 26, 2011, with an estimated collection of \$119,400 (2,985 x \$40).

RECOMMENDATION

The county clerk should not require a \$40 fee prior to performing a marriage ceremony in addition to the required marriage license fee and taxes, but may accept, request, or solicit gratuities.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

This finding is without the support in fact or law. The Clerk is permitted under *TCA* § 36-3-301(c) to receive a gratuity for the performance of marriage ceremonies. The Attorney General's Opinion No. 11-18 states that such is lawful as long as it is not a "fee." This finding is somewhat ambiguous, while it acknowledges the right of a gratuity, it defines under Webster's New Ninth Collegiate Dictionary the definition of a gratuity which the statute allows the Clerk. There is no evidence, we repeat no evidence, that anyone who did not pay the requested gratuity was denied the services of the Clerk in performing the ceremony. As a matter of fact, there is ample evidence that such services were provided free of charge for persons in the military, and in many instances to those who could not or did not choose to accept the Clerk's request for a gratuity. There is no evidence that anyone was denied the performance of the marriage ceremony, due to his or her failure to offer the \$40 gratuity as requested by the Clerk. The form in use by the Clerk has been previously provided to your office (a copy of the form is attached as Exhibit A).

Therefore, there is no basis to make a categorical statement " ... the County Court Clerk required all of its employees to collect fees for the performance of marriage ceremonies." The Recommendation should be stricken, or at least a correction be made stating that the Clerk has not charged a fee, but has requested a gratuity, as evidenced by the attached language (Exhibit A). Such meets the statutory requirements and therefore the County Clerk has not violated the statute *TCA* § 36-3-301(c).

AUDITOR'S REBUTTAL

Sworn statements provided to the auditors and TBI from personnel in the county clerk's marriage department disclosed the county clerk required, with rare exception, a \$40 cash fee for the performance of a marriage ceremony. These personnel indicated they would assist individuals inquiring about a free marriage ceremony by giving them the general number to the county courthouse. The marriage department personnel disclosed the county clerk came to them with a policy change at the beginning of our investigation and told them to stop referring to a \$40 fee and instead use the word gratuity.

We interviewed individuals who had their marriage ceremonies performed by the county clerk. In each instance, these individuals told us they were required to pay a fee for the ceremony. In one case, a couple had to leave the County Clerk's Office and return with cash in order for the ceremony to be performed.

The form included in this report as Exhibit A and referenced to in the management's response to this finding is a document the county clerk began using for marriage ceremonies when his policy changed after June 26, 2011.

FINDING 11.02

THE OFFICE IMPROPERLY SHIFTED A DISBURSEMENT FROM THE GENERAL FUND BUDGETARY ACCOUNTS TO THE CLERK'S FEE AND COMMISSION ACCOUNT

During the fiscal year ended June 30, 2011, Delta Computer Systems, Inc., was paid \$49,080 for software and software support through the metropolitan government General Fund's budgetary accounts for the benefit of the county clerk. In early June 2011, the Metropolitan Government Finance Department was notified by the county clerk that it appeared the county clerk's General Fund budgetary accounts for 2011 would be overspent, and while it was too late to amend the budget, the office was anticipating a refund for an overpayment. On June 6, 2011, the county clerk emailed Delta Computer Systems, Inc., and stated "I appreciate your assistance with my request to help me close out this fiscal year June 30. We will wire you the \$49,080, which represents services paid to date to Delta Computer Systems. In return, you will send us a check for the same amount. I understand this exchange will allow us to properly credit the account for which these funds were allocated. I appreciate if we could do this before next week." On June 16, 2011, the County Clerk's Office issued a check for \$49,080 to Delta Computer Systems, Inc., from its fee and commission account to pay invoices that had previously been paid from the metropolitan government General Fund. The refund check was received and deposited by the County Clerk's Office on June 29, 2011, and was then credited back to the clerk's budgetary account in the General Fund. The purpose of these transactions was to move the expenditure for software and software support from the General Fund to the county clerk's fee and commission account. The \$49,080 was paid out of the fee and commission account with monies collected for computer fees. As referred to in Finding 11.03, these computer fees should have been remitted to the metropolitan government and restricted in the General Fund for the county clerk's use. All expenses of the County Clerk's Office should be paid through the budgetary process of the General Fund.

It appears the purpose of obtaining the refund check from Delta Computer Systems, Inc., was to improve the status of the office's General Fund budgetary accounts by reducing an expenditure line-item of the county clerk's General Fund operational budget. By improperly shifting the expenditure to the clerk's fee and commission account instead of including the expenditure in the General Fund budgetary accounts, the transaction circumvents the budgetary process established by the metropolitan government.

RECOMMENDATION

All expenditures for the office should be made through the General Fund budgetary process. The County Clerk's Office should follow established guidelines provided to office holders by the metropolitan government to amend its budget when necessary.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

Finding 11.02 deals with the payment by the Clerk's office for computer services by funds was contrary to the budget process of the Metropolitan Government. Such fails to recognize the relationship between the County Clerk and the Metropolitan Government, which was noted in a report communication to the Clerk's office from the Comptroller's office dated December 13, 2002. That ambiguity is recognized on page 5 of the December 2002 report, is

quoted in the accompanying letter in response to this recommendation. The County Clerk works with the Finance Office of the Metropolitan Government, in regards to this observation in light of the statutory provisions of *TCA 8-21-701(2)(B)*.

The statute permits the Clerk's office to collect \$2, for certain fees and licenses, to be dedicated to computer services for the Clerk's office. The statutory provision allows the Clerk to collect the fee in:

" ... the amount \$2 (two dollars) shall be earmarked for computer hardware purchase or replacement, but may be used for other use if necessary for other computer related expenses at the discretion of the County Clerk. The amount shall be reserved for these purposes and shall not be reverted to the general fund at the end of the budget year if unexpended ... "

In light of that statutory provision, and the uncertainty of the relationship between the Clerk and the Metropolitan Government, raises serious doubt of Finding 11.02; "The Office Improperly Shifted a Disbursement From The General Fund Budgetary Accounts to the Clerk's Fee and Commission Account," as being incorrect both in fact and in law.

The County Clerk follows these recommendations since he is already remitting such to Metro on a periodic basis. The problem is to make certain that Metro restricted these funds from the general funds solely for the Clerk's use as dictated by the statute, and not revert to the general funds at the end of the year.

AUDITOR'S REBUTTAL

The County Clerk's Office is not authorized to disburse funds from the fee and commission account for the purchase of goods and/or services. All expenditures for the office should be made by Metropolitan Government Finance Department through the General Fund budgetary process. This transaction involved a disbursement by the clerk's office to circumvent the budgetary process of the metropolitan government by generating a vendor refund check remitted to the Metropolitan Government Finance Department in order to correct a forecasted budgetary shortfall in the County Clerk's Office.

The county clerk is not remitting the proceeds from the collection of the \$2 fee to the metropolitan government as required by statute. The office began collecting the \$2 fee July 1, 2008, and has only twice remitted the fee to the metropolitan government. In each instance, the office immediately requested the money be returned from the metropolitan government. The metropolitan government did not return these funds. This \$2 fee is to be remitted to the metropolitan government and restricted in the General Fund for the county clerk's use. At June 30, 2011, the office had \$65,140.69 of computer fees in their fee and commission account that had not been remitted to the metropolitan government.

FINDING 11.03

THE OFFICE DID NOT REPORT AND DISBURSE COMPUTER FEES TO THE COUNTY TRUSTEE ON A REGULAR BASIS

Section 8-21-701(2)(B), *Tennessee Code Annotated*, entitles the county clerk to earmark \$2 of the total fee collected for each business tax return for computer hardware purchases or replacement. The fee may be used for other usual and necessary related expenses at the discretion of the county clerk. This \$2 fee is to be remitted to the metropolitan government twice a year along with the other fees collected by the office, and restricted in the General Fund for the county clerk's use. The office began collecting the \$2 fee July 1, 2008, and has remitted the fee to the metropolitan government twice. At June 30, 2011, the office had \$65,140.69 of computer fees in the fee and commission account. The disbursement from the fee and commission account noted in Finding 11.02 was funded from these accumulated computer fees.

RECOMMENDATION

All computer fees should be remitted to the metropolitan government and restricted in the General Fund for the county clerk's use.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

This recommendation is difficult to understand in light of the statute (*TCA* § 8-21-701(2)(B)), which gives the right to the Clerk to the \$2 fee solely for his office for computer technology. Further the statute earmarks these funds for the Clerk's office and directs when and how it should be transmitted and not revert to the general fund at the end of the year if there is a surplus. The Clerk's office has established a regular times, i.e., monthly, quarterly, etc., when it transmits these funds to Metro to be held in a reserve account for the Clerk's use as stated in the statute.

AUDITOR'S REBUTTAL

The county clerk is not remitting the proceeds from the collection of the \$2 fee to the metropolitan government as required by statute. The office began collecting the \$2 fee July 1, 2008, and has only twice remitted the fee to the metropolitan government. In each instance, the office immediately requested the money be returned from the metropolitan government. The metropolitan government did not return these funds. This \$2 fee is to be remitted to the metropolitan government and restricted in the General Fund for the county clerk's use. At June 30, 2011, the office had \$65,140.69 of computer fees in their fee and commission account that had not been remitted to the metropolitan government.

**FINDING 11.04 THE OFFICE HAD DEFICIENCIES IN THE
ADMINISTRATION OF PAYROLL**

The County Clerk's Office administers and maintains some payroll records. These records are submitted to the Finance Office for payment. The investigation of the County Clerk's Office revealed deficiencies in the administration of payroll as noted below:

- A. The County Clerk's Office did not require employees to maintain time and attendance records. However, it was common practice of the office to require employees to submit written requests for time off from work.
- B. Currently, the various supervisors within the office provide the chief deputies of administration and operations with information to adjust an employee's work hours and their use of leave. Auditors noted instances where employees had remitted various leave slips that were not reflected in the payroll detail on their payroll records.
- C. An employee advised the auditors that he did not work the normal 40 hours every week because he is a salaried employee. The county clerk advised the auditors that every employee is expected to work their hours and if not, leave should be taken to make up the difference in their scheduled hours.

Another employee advised the auditors that he received 40 hours a week pay while working only three days a week or less since he was attending college fulltime. However, this employee's pay was later reduced by various hourly amounts. Due to the lack of documentation of detailed payroll records, auditors could not determine whether the reduction of the pay reconciled with the amounts the employee was overpaid.

- D. In December 2009, our examination of payroll records revealed 63 employees each received 21 hours of overtime pay at their regular hourly rate totaling \$20,651.04, and one employee received 15 hours of overtime pay at the regular hourly rate totaling \$241.80. Based on a sample of employees interviewed, we determined these overtime hours were not worked by employees.

In December 2010, our examination of payroll records revealed 63 employees received various overtime hours ranging from 7 to 38 hours paid at 1.5 times the regular hourly rate totaling \$40,914.08. Based on a sample of employees interviewed, we determined that while some employees worked an hour or two overtime during the county clerk's move to a new facility, no employees worked as many hours overtime as reported on their payroll records.

An employee included in the December 2009 and 2010 overtime pay also received additional overtime pay in April and May 2011 totaling \$3,100.55. In addition to 40 hours of regular pay, the employee received weekly hours of 40, 38, 34.5 and 28. There was no documentation or records to support these overtime payments.

We also noted several instances of part-time employees receiving between 14 and 20 hours of additional pay in the months of December 2010 and April 2011, for hours the employees stated they did not work. The employees thought the extra pay was a “bonus” or a “little something extra.” In these instances, the additional pay totaled \$1,136.98.

The chief deputy advised these payments reported as overtime in 2009 and 2010 should have been classified as bonus pay rather than as hours worked.

- E. Management did not provide any documentation to support work hours deducted from the normal pay of two part-time employees. Part-time employees usually work set hours. Some employees remitted documentation of hours worked, but this documentation was not retained by the office. These employees advised the auditors they did not know why they were docked hours, and the chief deputy stated he most likely keyed their time incorrectly.
- F. The auditors asked the County Clerk’s Office for written policies and procedures used by the office. The county clerk advised auditors it is his constitutional right to govern his office as he sees fit. He stated he followed some of metro’s policies, but not all. However, the personnel policies followed by the County Clerk’s Office were not in writing. Certain personnel policies adopted by the county clerk permit employees to accumulate earned but unused vacation, sick, and compensatory leave. However, the Metropolitan Government Department of Finance did not have documentation on file to support leave for the employees and could not provide auditors with accrued leave balances at June 30, 2011, because the County Clerk’s Office does not submit this information with their payroll.
- G. Management allowed employees to take paid annual leave, sick leave, and compensatory time prior to earning these benefits. We noted the leave balances of several employees were negative at June 30, 2011. Leave taken and not earned at June 30, 2011, totaled \$1,968.51 for annual leave, \$3,579.68 for sick leave, and \$1,105.64 for compensatory time.

RECOMMENDATION

The County Clerk’s Office should have, at a minimum written, personnel policies to assist in maintaining compliance with applicable state and federal laws, to facilitate accurate recordkeeping, and should include policies for leave, compensatory time, non-discrimination and sexual harassment. Time and attendance records should be maintained for all employees. These time and attendance records should be signed by each employee, as evidence of the accuracy of the records, and signed by supervisory personnel as evidence of review and approval. Payroll records should reflect actual time worked and leave used. Employees should be paid for actual time worked, and leave earned should be based on accurate time and attendance records. Accurate documentation should be maintained for all leave earned and used, hours deducted from normal pay, and the addition of hours worked beyond a normal work week. Sound business practices dictate that leave records of general government employees should be centrally filed with the Metropolitan Government

Finance Office, and generally accepted accounting principles require all accrued leave balances with guaranteed payment provisions be reflected in the Comprehensive Annual Financial Report of the Metropolitan Government of Nashville Davidson County. The county clerk should provide his staff with written personnel policies and procedures. The failure to maintain adequate documentation of accumulated leave weakens internal controls over the payroll process, increases the risks of improper payments, and prohibits the presentation of accrued leave balances in the financial statements.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

The numerous antidotal hearsay statements and observations, by the auditors are not a significant basis for the broad conclusions in Finding No. 11.04. As noted, the Clerk has been in consultation with the Metropolitan Government's Human Resources office to address deficiencies that may arise out of keeping proper time and attendance of the employees of the Clerk's office. In addition, CTAS of the University of Tennessee is assisting in formulating those policies to avoid any errors in keeping proper time of employees. Despite the fact that the County Clerk is a constitutional officer, he has sought the advice of the Metro Human Resources Department and CTAS for recommendations to assure the keeping of proper time records, so that the time that people actually work or the time they are off will be accurately recorded.

AUDITOR'S REBUTTAL

The auditors and TBI have sworn statements by personnel of the County Clerk's Office, as well as copies of their payroll records, to document the payroll deficiencies noted. The office did not have any written personnel policies during the time of this investigation.

FINDING 11.05 **THE COUNTY CLERK DID NOT REQUIRE DOCUMENTATION OR VERIFICATION OF TIME WORKED FOR A PART-TIME OUTREACH COORDINATOR**

The county clerk hired his campaign treasurer, Mr. Leighton Bush, on September 1, 2006, as his outreach coordinator. The county clerk advised auditors and the TBI that 1) he never required Mr. Bush to record his hours worked, 2) Mr. Bush worked part-time strictly at the county clerk's direction, and 3) most of Mr. Bush's responsibilities were performed outside of the main office. During the auditor's interview with Mr. Bush, he stated he did not turn in time sheets to the clerk's office documenting his time worked, and he did not generate any reports of outreach projects completed on behalf of the clerk. Auditors were not provided any documentation from the County Clerk's Office that could substantiate the hours worked by Mr. Bush.

The County Clerk's Office did not require employees to maintain time and attendance records; however, common practices of the office required employees to submit written requests for leave. The county clerk's chief deputies of administration and operations assured the auditors they were able to account for both full-time and part-time employees through daily observations by senior management and middle level supervisory staff.

However, both chief deputies advised auditors Mr. Bush reported directly to the county clerk, and they could not substantiate the time he worked. The chief deputy of administration told auditors that part-time employees do not receive pay for time off. However, during an interview with the auditors, the clerk stated Mr. Bush had occasionally taken vacations and been off work as a result of illness. However, auditors could ascertain from payroll records that Mr. Bush's pay was reduced by an hour in only two instances during his tenure in the clerk's office. Mr. Bush's payroll records routinely detailed he was paid for 20 hours a week. It should be noted Mr. Bush's metro payroll records reflected he earned a total of \$63,085 during the period September 1, 2006, through July 11, 2011. On July 12, 2011, the county clerk began requiring Mr. Bush to keep records of his hours worked.

RECOMMENDATION

The county clerk should require time and attendance records to document time worked by all employees. These records should detail days and hours worked, and should be signed by the employee and his supervisor attesting to the accuracy of the records.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

The County Clerk disagrees with the Conclusion of Law in the finding that the County Clerk did not Require Documentation or Verification of time worked for a Part-Time Outreach Coordinator. As noted in the Response to Finding No. 11.04, the Clerk has developed, with Metro's Human Resources and CTAS policies, and procedures to address this solution. The changes are applicable to for all employees, both part-time, and full-time, and includes appropriate time records, i.e., a time card for checking in and, out, under the direct supervision of the employee's supervisors, assuring the accuracy of the records will be adopted.

AUDITOR'S REBUTTAL

The county clerk did not have time and attendance records to substantiate time worked by the employee. It should be noted that auditors and the TBI requested documentation from the employee, and he stated that he had no documentation detailing his time worked. The office did not have any written personnel policies during the time of this investigation.

FINDING 11.06 **A PART-TIME EMPLOYEE RECEIVED BENEFITS AVAILABLE TO FULL-TIME STAFF**

An employee classified as full-time has been consistently working less than full-time hours, yet has received paid leave and health insurance coverage benefits. The metropolitan government personnel policy states paid leave benefits are available only to full-time employees. Part-time employees may receive health insurance coverage benefits if employees work 20 hours or more per week. This employee has worked an average of 19 hours a week for the last two years. The employee's salary for the year ended June 30, 2011, totaled \$19,277.59; which included a payment for a longevity bonus totaling

\$935, and \$17,276.65 for the year ended June 30, 2010. The employee earned 399.36 hours of annual leave and 192 hours of sick leave for the last two years. The department also paid the employer's portion of the employee's health insurance and other benefits for the year ended June 30, 2011, totaling \$15,283.57 and \$12,737.83 for the year ended June 30, 2010.

RECOMMENDATION

The county clerk should only provide benefits authorized in the metropolitan government personnel policy or a policy developed by his office.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

The County Clerk disagrees with the Conclusion of Law in the finding that the Clerk violated a Part-Time Employee Received Benefits Available to Full-Time Staff. The recommendation concedes that the Clerk is not bound by the Metropolitan Government Personnel Policy because it states that he may develop his own policy.

The Clerk has reviewed all part-time staffing and makes benefit corrections where needed, with the assistance of Metropolitan Human Resources and CTAS of the University of Tennessee.

AUDITOR'S REBUTTAL

The county clerk told auditors and TBI the office generally followed the metropolitan government employee handbook. All policies and procedures should be in writing and clearly conveyed to employees and applied consistently. The office did not have any written personnel policies during the time of this investigation.

FINDING 11.07 **THE COUNTY CLERK VIOLATED METROPOLITAN GOVERNMENT PROCUREMENT POLICIES**

The county clerk hired Mr. David Currey on June 16, 2008, as a part-time/seasonal employee of the office. Mr. Currey worked 80 hours biweekly earning \$1,160 per pay period. At that time, Mr. Currey was renting a house from the county clerk. Mr. Currey advised auditors he discussed quitting his job with the county clerk and working as a consultant for the office when needed. On August 29, 2008, Mr. Currey resigned and was hired by the county clerk as a consultant to perform his previous duties. Mr. Currey's business, Encore Interpretive Design, received \$34,090 from September 2008 through June 29, 2009, and \$6,000 from December 2010 to May 2011. No competitive bids or requests for proposals were obtained by the county clerk, no formal written contract was signed detailing the services to be provided, and the fact Mr. Currey was renting property owned by the county clerk was not disclosed as a possible conflict of interest to the Metropolitan Nashville Purchasing Agent. The Metropolitan Nashville Procurement Policies require competitive bids or requests for proposals for purchases of goods and or services equal to or exceeding \$10,000. Also, the Metropolitan Nashville Code of Laws

4.48.030 provides general standards of ethical conduct to follow to avoid a conflict of interest, and section 4.48.090 provides restrictions on the hiring of former employees who are performing duties connected with their previous employment. This noncompliance is the result of management's decisions and could result in the appearance of a conflict of interest or ethics violation.

RECOMMENDATION

The county clerk should follow the guidelines set forth in the Metropolitan Nashville Procurement Policies and the Metropolitan Nashville Code of Laws.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

The County Clerk disagrees with the Conclusion of Law in the finding that the Clerk violated Metropolitan Government Procurement Policies since such assumes that the Clerk is bound to follow such procedure. Please note that the recommendation states that the Clerk "should" which means it is discretionary not mandatory. The question of the authority of the Clerk in relation to the Metropolitan Government is one of legal debate and has not been conclusively interpreted. Therefore, to say that the Clerk "violated" Metropolitan Government Procurement Policies, which he "should" have followed is a non-sequitur. The Clerk having been advised of this has asked the Metro Financial Department to coordinate with his office on purchasing procedure as practiced by Metro.

AUDITOR'S REBUTTAL

As stated in the recommendation, the clerk should follow the guidelines set forth in the Metropolitan Nashville Procurement Policies and the Metropolitan Nashville Code of Laws.

FINDING 11.08 **THE ECONOMIC BENEFIT DERIVED FROM THE USE OF A METROPOLITAN GOVERNMENT PROVIDED VEHICLE WAS NOT CALCULATED AND REPORTED ON FEDERAL FORM W-2**

The county clerk used a metropolitan government owned vehicle to commute to and from work. The economic benefit derived by the clerk from using this vehicle was not calculated and reported to the federal government on the county clerk's Form W-2 as required by Internal Revenue Service (IRS) regulations and the metropolitan government's Department of General Services administrative order 07-09.

RECOMMENDATION

The personal benefit received by the county clerk from using a metropolitan government owned vehicle to commute to and from work should be calculated and included on his Form W-2 as required by IRS regulations and the metropolitan government's Department of General Services administrative order 07-09.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

It is the responsibility of the Metropolitan Government to properly report on the W-2 or the 1099 for compensation received from those for whom the Metropolitan Government has taken responsibility for preparing payrolls. This includes such things as mentioned herein and it is the responsibility of the Metropolitan Government, not the Clerk's office to provide such information to the ones for whom they prepare payroll. Therefore, it is improper and unfair to suggest that the Clerk, who does not prepare the payroll, the W-2's or the 1099's, by holding him responsible for the failure of the payroll department to do the proper Federal reporting.

AUDITOR'S REBUTTAL

The vehicle was provided to the county clerk by the metropolitan government. Metropolitan Government Administrative Order 07-09, provides that individuals who receive a vehicle to drive are directed to an IRS web-site for additional guidance on IRS Publication 15-B Fringe Benefits. The county clerk is responsible for providing the mileage calculation driven to and from work in order for the metropolitan government to properly report the fringe benefit on the clerk's Form W-2.

The metropolitan government informed auditors the payroll department would have no way of knowing which employee is receiving the benefit of a metropolitan government vehicle without the various departments letting them know. According to the metropolitan government's Department of General Services, Fleet Management, each department has a fleet coordinator who is the liaison between the department and the metropolitan government payroll department. The fleet coordinator for the County Clerk's Office is Leighton Bush. The metropolitan government payroll department provides the fleet coordinator with a memorandum (Exhibit B) that includes guidance on reporting the fringe benefit valuation.

FINDING 11.09 **THE CLERK'S MANAGEMENT STAFF PROMOTED VARIOUS CAMPAIGN ACTIVITIES IN THE CLERK'S OFFICE DURING BUSINESS HOURS**

Auditors were advised by the county clerk that his policy prohibits campaign activities in the office. However, auditors were informed by numerous employees that the clerk's management staff had solicited campaign donations from employees on behalf of the clerk during regular business hours. In another instance during regular business hours, management requested volunteers to work a fundraiser after work. Some employees disclosed to auditors they had to leave the office early to arrive at the fundraiser to perform their volunteer work. They further disclosed they were not required to take leave for their early departure to the campaign fundraiser.

RECOMMENDATION

Campaign activities should be prohibited by the County Clerk's Office in accordance with office policy. Employees should take official leave from work if they depart during regular business hours to perform volunteer work for the clerk's campaign fundraisers.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

As stated in the personal interview between the Clerk and the representative of the Comptroller's Office and the TBI, it has been the policy of the County Clerk to prohibit political activities in the office regardless of whether it is on work time or non-work time. That policy has been renewed and has been restated to each individual; employee and it is required that each employee sign a statement that he or she understands the policy of the Clerk's office that there is to be no political activity in the Clerk's office as such is prohibited.

FINDING 11.10 **RECEIPTS WERE NOT ALWAYS ISSUED AT THE TIME OF COLLECTION, COPIES WERE NOT MAINTAINED, AND OFFICIAL RECEIPTS WERE NOT ALWAYS USED**

Office employees visit area businesses to determine whether the businesses have a current business license. If needed, the employees issue the business a current license. If applicable, they also collect any back interest and penalties due. For cash payments, these employees issue official receipts. For noncash payments, no receipts are issued.

In addition, office employees verify that transient vendors have the required permits to sell at conventions, seminars, parades, and other special events. Employees issue receipts for both cash and noncash payments; however, these receipts are generic and do not contain the name of the metropolitan government or office.

For the business licenses issued in the field, the paper duplicate receipt is discarded by the office once the transaction is entered into the clerk's accounting records; therefore, no copy of the receipt is retained. The receipts issued to transient vendors are maintained in a separate file at the County Clerk's Office. Sections 9-2-103 and 9-2-104, *Tennessee Code Annotated*, require the issuance of official prenumbered receipts and that duplicate receipts be maintained in a well-bound book or on a form approved by the Comptroller of the Treasury. The use of generic receipts exposes the office to risks that collections may not be accounted for properly.

RECOMMENDATION

The office should issue official prenumbered receipts for all collections at the time of collections. These official receipts should clearly reflect the name of the metropolitan government and the office. Copies of the receipts should be retained.

MANAGEMENT'S RESPONSE – METROPOLITAN NASHVILLE DAVIDSON COUNTY CLERK

In regard to Finding 11.10, the Clerk has instituted a policy of issuing official pre-numbered receipts for all collections cash or non-cash. Each receipt is to reflect the name of the County and the office. Copies of the receipt are kept for an appropriate length of time if there are any questions arise from the issuance of such a receipt.

FINDING 11.11 **THE COUNTY CLERK'S OFFICE HAS WEAKNESSES IN INTERNAL CONTROLS OVER COLLECTIONS**

The county clerk did not implement adequate controls to protect the collection of funds. This finding does not identify specific vulnerabilities that could allow someone to exploit the office's collection and handling of these funds. Disclosing those vulnerabilities could present a potential security risk. Sound business practices dictate that proper controls be implemented. Without these controls, funds could be lost or stolen.

RECOMMENDATION

Adequate controls should be implemented to protect the funds collected by the office.

Exhibi

TCA 36-3-301(c) authorizes officials to receive a gratuity for performance of a marriage ceremony.

I voluntarily agree to a gratuity of _____ dollars for the performance of vows of marriage, performed by the Davidson County Clerk or Deputy County Clerk under T.C.A. 18-1-108(4).

Signature

Gratuity Given

Date

Exhibi

To: Metro Time Keepers and Financial Managers

From: Payroll

Regarding: Employees with Take Home Vehicles

The enforcement of the vehicle use and assignment policy is the responsibility of each department or agency head. The purpose of this memo is to provide additional guidance for the appropriate federal income tax treatment for any employee who is assigned a Metro vehicle 24 hours a day and drives a Metro vehicle home.

Authoritative Sources – IRS Publication 15-B (2011) and General Services Administrative Order 07-09

Exclusions – If an employee is assigned a vehicle that meets any of the following conditions, there is **no impact** on federal income taxes.

- Clearly marked police, fire and public safety vehicles
- Unmarked vehicles used by law enforcement officers if the use is officially authorized
- Ambulances
- Vehicles designed to carry cargo with a loaded gross weight over 14,000 pounds
- Delivery trucks with one seat or a driver plus a folding jump seat
- Passenger buses for at least 20 passengers and school buses
- Bucket trucks, dump trucks, flatbed trucks, qualified moving vans, and specialized utility repair trucks
- Pickup trucks that are clearly marked and equipped with a hydraulic lift gate, tanks or drums, high side boards or panels or other heavy equipment; or pickup trucks specifically designed or modified to transport particular types of loads.
- Vans that are clearly marked and have permanent shelving in most of the cargo area or have an open cargo area that always carries materials used by Metro.

Fringe Benefit Valuation - There must be a fringe benefit valuation for employees with take home vehicles that do not meet any of the conditions above for exclusion. For most employees the valuation will be based on the “commuting rule” described below. For **control employees**, defined by the IRS as

elected officials and employees whose annual compensation is \$145,700 or greater, the fringe benefit is valued at the fair market value of the vehicle. If this applies in your department and you need assistance with the related calculations and payroll entry, please contact Mary Ann Love. For all other employees, the **commuting rule** applies, and the fringe benefit is valued at \$1.50 for each one-way commute (\$3 per work day).

Entering the Fringe Benefit in Payroll – If you have employees with take home vehicles that do not meet the conditions for exclusion from fringe benefits and for whom you have not been entering the value of the benefit during calendar year 2011, compute the value of the benefit as described above for the period the employee was taking the vehicle home during calendar year 2011 and enter it for the **last paycheck** the employee will receive before December 31, 2011 (Police and Fire - pay period ending December 15, 2011, all other General Government departments and agencies -pay period ending December 23, 2011). Use payroll code 314 and enter the number of days the vehicle was driven home in the hours field.

If you are among the departments that have been entering a fringe benefit for take home vehicles throughout the year, we will send you a list of employee names and the year to date take home vehicle fringe benefit amount entered by separate e-mail today so you can check what has been entered for accuracy and so you can confirm with your department's management that the list is complete.

All other departments should verify the existence or absence of employees with take home vehicles with departmental management. If your department has employees with take home vehicles you will need to determine whether the vehicles meet the conditions for exclusion or whether you will need to compute and enter values for fringe benefits. Note that this entry will only impact taxable wages and will not impact salaries.

Feel free to call or e-mail Mary Ann Love or Kim McDoniel if you have any questions or need additional information.

- Employees solicited campaign contributions from staff during regular business hours and on at least one occasion some employees were asked to leave work early to attend a political fundraiser held on Arriola's behalf.

The investigation also found that the clerk's office failed to turn over computer fees to the county general fund as required by state law. More than \$65,000 as of June 30, 2011, was on hand in the clerk's fee and commission account.

All of the findings and recommendations have been forwarded to the Davidson County District Attorney General.

To view the investigative report online, go to:

<http://www.comptroller1.state.tn.us/repository/CA/2011/Davidson%20county%20clerk%20special%20report.pdf>

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